

**PROPOSED AMENDMENT**  
**UNOFFICIAL COMMUNICATION—DO NOT FILE**

Remarks

This Response is in reply to the Office Action mailed October 7, 2003.

I. Specification

The Examiner requested the Applicant's cooperation in correcting any errors of which the Applicant becomes aware of in the specification. The Applicant has done so and set forth any found errors in the Amendments above.

II. Claim Objections

Claims 19-23 were objected to based on a missing "and" in Claim 19. Claim 8 was objected to as incorrectly numbered in that Claim 8 should be Claim 9. The Applicant has amended both claims to obviate these objections. The Applicant respectfully submits that these objections be removed.

III. Rejection of Claims 1-27 Under 35 U.S.C. §112, Second Paragraph

Claims 1-27 have been have been rejected as indefinite based on the terms "unique" and "optimized" that the Examiner maintains are "subjective, relative term[s] which render[ ] the claim indefinite." The Applicant has amended all claims to remove these words and therefore respectfully requests that these rejections be removed.

The Examiner further rejected Claim 24 as indefinite since "it is not clear whether the claim is directed to a method claim or apparatus claim." Claim 24 calls for a "computer readable medium having computer instructions stored thereon that, when loaded into a computer system, cause the computer system to perform a method of co-mailing..."

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In response, the Applicant submits that Claim 24 is a statutory article of manufacture claim as set forth in M.P.E.P. 2106, IV. B. (a), with the relevant portion of that section reproduced below:

Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and Office personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material. When a computer program is claimed in a process where the computer is executing the computer program's instructions, Office personnel should treat claim as a process claim. See paragraph IV.B.2(b), below. When a computer program is recited in conjunction with a physical structure, such as a computer memory, Office personnel should treat the claim as a product claim. See paragraph IV.B.2(a), below.

M.P.E.P. 2106, IV. B. (a) (underline and emphasis added).

Claim 24 calls for a "computer readable medium," a computer memory, and therefore should be analyzed as an article of manufacture claim in accordance with the M.P.E.P. section above. The Applicant respectfully submits that the claim as written is therefore not indefinite under §112 since it is an article of manufacture claim (not a method or apparatus claim).

IV. Rejection of Claims 1-8, 10-12, 14-17, 19-20 and 24-27 Under 35 U.S.C. §102(b)

The Examiner has rejected the above claims under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,287,976 (the Mayer Reference).

A. Claim 1

Claim 1, as amended, calls for, among other things, a co-mailing system comprising:

a merge stream for merging the plurality of first publications and the plurality of second publications into the